



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Gulf of Mexico, Apalachicola Bay, East Bay, St. Andrew Bay and St. Andrew Sound at Tyndall Air Force Base, Florida; restricted areas.

AGENCY: U.S. Army Corps of Engineers, Department of Defense

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations by revising an existing restricted area regulation and establishing a new restricted area along portions of the Tyndall Air Force Base (AFB) facility shoreline that will be activated on a temporary basis. The duration of temporary restricted area activations will be limited to those periods where it is warranted or required by specific and credible security threats and will be inactive at all other times. The restricted area will be partitioned using 23 pairs of coordinates to facilitate quick geographic recognition. Tyndall AFB is surrounded on three sides by water with approximately 129 miles of unprotected coastline. This includes several areas where the lack of security or lack of restriction on access to these areas leaves Tyndall AFB personnel and resources vulnerable to unauthorized activities. This amendment is necessary to implement an enhanced threat security plan for Tyndall AFB which will allow temporary activation of

one or more portions of the restricted area as necessary to provide the appropriate level of security required to address the specific and credible threat triggering the need for activation. This proposal is an amended version of the proposal published in the Federal Register on May 9, 2013 (78 FR 27126).

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2013-0003, by any of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number, COE-2013-0003, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2013-0003. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov

web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Mr. Edward Sarfert, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, Pensacola Regulatory Office at 850-439-9533.

SUPPLEMENTARY INFORMATION:

Executive Summary

External reviews of security at Tyndall AFB identified the lack of jurisdiction to respond to threats from the waterways as a major weakness. Tyndall AFB does not currently have the authority to restrict access to the shoreline of Tyndall AFB if needed to respond to a security threat. The purpose of this regulatory action is to establish a restricted area in the waters surrounding portions of Tyndall AFB that would only be activated on a temporary basis in response to specific and credible security threats. Additionally this amendment provides an administrative correction to the existing regulation at 33 CFR 334.660.

The Corps authority to establish the restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to revise the regulations at 33 CFR Part 334 by establishing a restricted area in the waters surrounding Tyndall AFB. This amendment will allow the Installation Commander, Tyndall AFB to temporarily restrict the passage of persons, watercraft, and vessels in waters contiguous to this facility when a specific and credible security threat is identified, providing greater security for personnel and equipment during those periods. The administrative correction at 33 CFR 334.660(b)(3) will clarify who is responsible for enforcing the provisions of § 334.660.

This proposed rule replaces the proposed rule that was originally published in the May 9, 2013, issue of the Federal Register (78 FR 27126). The Corps received many

comments on that proposed rule, and after those comments were fully considered, Tyndall AFB made substantial changes to its request for a new restricted area. Those changes are incorporated into this proposed rule.

Procedural Requirements

a. Review Under Executive Order 12866. The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Tyndall AFB has approximately 129 miles of unprotected shoreline, including several areas where the lack of security or restriction on access leaves Tyndall AFB personnel and resources vulnerable to unauthorized activities. Therefore, the proposed restricted area regulation is necessary to implement an enhanced threat security plan for Tyndall AFB which will allow for the temporary activation of one or more portions of the restricted area as necessary to provide the appropriate level of security required to address the specific and credible threat triggering the need for the activation. The temporary restrictions in the proposed rule are also necessary to protect the public from potentially hazardous conditions that may develop as a result of military use of the area. When the restricted area is activated, small entities can continue to use

the navigable waters surrounding Tyndall AFB that are outside of the restricted area.

After considering the economic impacts of this proposed restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. We are interested in the potential impacts of the proposed regulation on small entities and welcome comments on issues related to such impacts.

c. Review Under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act. This regulation does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this regulation.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.660(b)(3) to read as follows:

§334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.

* * * * *

(b) * * *

(3) The federal regulations in this section shall be enforced by the Installation Commander, Tyndall Air Force Base, Florida, and such other agencies as he/she may designate.

3. Add §334.665 to read as follows:

§334.665 East Bay, St. Andrew Bay and St. Andrew Sound, enhanced threat restricted area, Tyndall Air Force Base, Florida.

(a) *The area.* (1) The coordinates provided herein are approximations obtained using a commercial mapping program which utilizes Simple Cylindrical projection with a WGS84 datum for its imagery base and imagery dated February 15 and May 3, 2014.

(2) Each portion of the temporary restricted area described in paragraphs (a)(4)(i) through (xxiii) of this section shall encompass all navigable waters of the United States as defined at 33 CFR Part 329 within the area described and includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(3) Because of the dynamic nature of these geographic features near barrier islands, the coordinate points provided may not reflect the current situation regarding the location of a point at the mean high water line or 500 feet waterward of the mean high

water line. Even if the landform has shifted through erosion or accretion, the intent of the area description will be enforced from the existing point at the mean high water line that is closest to the shoreline point provided herein out to a point located 500 feet waterward of the mean high water line.

(4) The restricted area will be partitioned using 23 pairs of coordinates to facilitate quick geographic recognition. The first point in each pair of coordinates is located on the shoreline, and the second point is a point 500 feet waterward of the shoreline. From the first point in each pair of coordinates, a line meanders irregularly following the shoreline and connects to the first point in the next pair of coordinates. From the second point in each pair of coordinates, a line beginning 500 feet waterward of the shoreline meanders irregularly following the shoreline at a distance of 500 feet waterward of the shoreline and connects to the second point in the next pair of coordinates. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR Part 329 within the area bounded by lines connecting each of the following pairs of coordinates:

(i) *Farmdale Bayou*: 30° 1.156' N, 85° 26.915' W to 30° 1.238' N, 85° 26.915' W.

(ii) *Baker Bayou*: 30° 1.325' N, 85° 29.008' W to 30° 1.402' N, 85° 28.977' W.

(iii) *Blind Alligator Bayou*: 30° 2.094' N, 85° 29.933' W to 30° 2.151' N, 85° 29.864' W.

(iv) *Little Oyster Bay Point*: 30° 3.071' N, 85° 30.629' W to 30° 3.133' N, 85° 30.568' W.

(v) *Goose Point South*: 30° 3.764' N, 85° 31.874' W to 30° 3.719' N, 85° 31.795' W.

(vi) *Goose Point North*: 30° 4.599' N, 85° 31.577' W to 30° 4.650' N, 85° 31.503' W.

(vii) *Little Cedar Lake*: 30° 4.974' N, 85° 33.476' W to 30° 5.024' N, 85° 33.401' W

(viii) *Chatters on Bayou*: 30° 5.729' N, 85° 34.632' W to 30° 5.811' N, 85° 34.625' W.

(ix) *Fred Bayou*: 30° 5.992' N, 85° 35.296' W to 30° 6.071' N, 85° 35.325' W.

(x) *Pearl Bayou*: 30° 6.039' N, 85° 36.651' W to 30° 6.043' N, 85° 36.557' W.

(xi) *Military Point*: 30° 7.394' N, 85° 37.153' W to 30° 7.459' N, 85° 37.096' W.

(xii) *Freshwater Bayou*: 30° 7.425' N, 85° 38.655' W to 30° 7.473' N, 85° 38.578' W.

(xiii) *Smack Bayou*: 30° 7.826' N, 85° 39.654' W to 30° 7.838' N, 85° 39.560' W.

(xiv) *Redfish Point*: 30° 8.521' N, 85° 40.147' W to 30° 8.598' N, 85° 40.113' W.

(xv) *Davis Point*: 30° 7.348' N, 85° 41.224' W to 30° 7.364' N, 85° 41.317' W.

(xvi) *Tyndall Marina*: 30° 5.827' N, 85° 39.125' W to 30° 5.762' N, 85° 39.184' W.

(xvii) *Heritage Bayou*: 30° 3.683' N, 85° 35.823' W to 30° 3.743' N, 85° 35.887' W.

(xviii) *NCO Beach North*: 30° 4.209' N, 85° 37.430' W to 30° 4.272' N, 85° 37.368' W. The restricted Area will end on the west side of the land bridge that extends

into Shell Island. The Restricted Area resumes on the east side of the land bridge that extends into St. Andrew Sound.

(xix) *St. Andrew Sound west*: 30° 1.327' N, 85° 33.756' W to 30° 1.377' N, 85° 33.681' W.

(xx) *St. Andrew Sound northwest*: 30° 1.921' N, 85° 33.244' W to 30° 1.869' N, 85° 33.317' W.

(xxi) *St. Andrew Sound northeast*: 30° 0.514' N, 85° 31.558' W to 30° 0.452' N, 85° 31.619' W.

(xxii) *Wild Goose Lagoon*: 29° 59.395' N, 85° 30.178' W to 29° 59.319' N, 85° 30.216' W.

(xxiii) *Crooked Island North*: 29° 59.003' N, 85° 30.396' W to 29° 59.082' N, 85° 30.371' W.

(b) *The regulations.* (1) Unless one or more portions of the restricted area identified in (a)(4)(i) through (xxiii) of this section is activated, all persons, vessels and other craft are permitted access to all of the navigable waters described in paragraph (a) of this section.

(2) During times when the restricted area defined in paragraphs (a)(4)(i) through (xxiii) of this section is not active, U.S. Air Force boat patrols may operate in the waters adjacent to Tyndall AFB's shoreline to observe the shoreline in order to identify any threats to the installation or personnel. U.S. Air Force personnel will not have any authority to enforce federal, local or state laws on the water.

(3) Due to the nature of security threats, restricted area activation may occur with little advance notice. Activation will be based on local or national intelligence

information related to threats against military installations and/or resources common to Tyndall AFB in concert with evaluations conducted by the Tyndall AFB Threat Working Group and upon direction of the Installation Commander, Tyndall AFB. The Installation Commander activates only those portions of the restricted area identified in paragraphs (a)(4)(i) through (xxiii) of this section necessary to provide the level of security required in response to the specific and credible threat(s) triggering the activation. The duration of activation for any portion(s) of the restricted area defined in paragraph (a) of this section, singularly or in combination, will be limited to those periods where it is warranted or required by security threats. Activated portions of the restricted area will be reevaluated every 48 hours to determine if the threat(s) triggering the activation or related threats warrant continued activation. The activated portion(s) of the restricted area expire if no reevaluation occurs or if the Installation Commander determines that activation is no longer warranted.

(4) Public notification of a temporary restricted area activation will be made via marine VHF broadcasts (channels 13 and 16), local notices to mariners, local news media through Air Force Public Affairs notifications and by on-scene installation personnel. On-scene installation personnel will notify boaters in the restricted area of the restriction and tell them that if they refuse to leave the area they will be trespassing and could be subject to prosecution.

(5) During times when the Installation Commander activates any portion(s) of the temporary restricted area defined in paragraph (a) of this section all entry, transit, drifting, anchoring or attaching any object to the submerged sea-bottom within the activated portion(s) of the restricted area is not allowed without the written permission of

the Installation Commander, Tyndall AFB, Florida or his/her authorized representative. Previously affixed mooring balls established to support watercraft during intense weather conditions (i.e., tropical storms, hurricanes, etc.) may remain within the activated portion(s) of the restricted area, however watercraft should not be anchored to the mooring balls without the permission of the Installation Commander, Tyndall AFB, Florida or his/her authorized representative.

(c) *Enforcement.* The regulations in this section shall be enforced by the Installation Commander, Tyndall AFB and/or such persons or agencies as he/she may designate.

Dated: September 4, 2015.

Edward E. Belk, Jr., P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

[FR Doc. 2015-23030 Filed:

9/11/2015 08:45 am; Publication

Date: 9/14/2015]